

DEC 14 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MYRIAATRICE L.S. CALDWELL,

Plaintiff - Appellant,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant - Appellee.

No. 04-17155

D.C. No. CV-03-00172-PMP

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted December 5, 2005 ^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Myriaatrice L.S. Caldwell appeals pro se from the district court's order denying her motion to reconsider its order upholding the Social Security Administration's termination of her disability benefits. To the extent we have

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction, it is conferred by 28 U.S.C. § 1291. We construe Caldwell's motion to reconsider as a Rule 60(b) motion because it was filed more than ten days after entry of judgment. See Fed. R. Civ. P. 60(b) & 59(e). We review for abuse of discretion, *Sch. Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), and we affirm.

We lack jurisdiction to address Caldwell's contentions regarding the merits of the district court's original entry of judgment because she failed to file a notice of appeal within 60 days of entry of final judgment and failed to file a timely post-judgment tolling motion. *See* Fed. R. App. P. 4. Accordingly, by order dated November 24, 2004, this court limited the scope of Caldwell's appeal to the denial of her motion for relief from the district court's judgment.

The district court did not abuse its discretion in denying Caldwell's motion because she failed to demonstrate mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or any other basis for relief from judgment. *See* Fed. R. Civ. P. 60(b); *See ACandS*, 5 F.3d at 1262-63.

AFFIRMED.